



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Custom Environmental Service, Inc.

File: B-234774

Date: May 24, 1989

DIGEST

Procuring agency properly waived bidder's failure to include price of one item in its bid where the work covered is divisible from the solicitation and the cost is de minimis relative to the total bid and would not affect the competitive standing of the bidders.

DECISION

Custom Environmental Service, Inc., protests the award of a contract to MJW Enterprises, Inc., under invitation for bids (IFB) No. GS-11P88MJC0115, issued by the General Services Administration (GSA) for landscape maintenance services. Custom asserts that MJW's bid should have been rejected as nonresponsive because MJW failed to submit a price for one line item.

We deny the protest.

The IFB called for landscape maintenance services at 14 locations in the Washington, D.C., area for 1 year with an option for 1 additional year. The IFB contained a bid sheet for the initial and option years for each location which listed 15 major tasks to be performed with sub-items under some of the tasks; the frequency with which each task was required to be performed; and spaces for bidders to insert unit and extended prices for each task. The sheet also contained a line for the total bid for that location. The individual sheets were identical for each location but all tasks were not required to be performed at each location. GSA thus inserted "N/A" (not applicable) on the individual location sheet in the unit and extended price columns for the work that was not required to be performed at that location. The IFB also contained a consolidated bid sheet which listed each of the 14 locations with a space for the bidder to insert its total price for that location and a line for the total estimated contract price for all 14 locations. The consolidated bid sheet advised bidders

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that they must complete the enclosed bid sheets for each item covered under the IFB, as well as the consolidated bid sheet. Finally, the IFB provided that the award would be made to the bidder that submitted the low aggregate bid for the initial and option periods.

Four bidders responded to the IFB. The low-bid was rejected as nonresponsive. MJW submitted the second low bid at \$428,700, and Custom was next low at \$438,010. On its consolidated bid sheet MJW inserted a dash for line item 12, the total estimated 12-month price for all services at 1 location, 10 P Street. The only work to be performed at 10 P Street was 12 applications of weed control for non-planted areas. On the individual bid sheets for 10 P Street for both the base and option year MJW left blank the unit and extended prices for this item, but inserted a dash in the space provided for the total price for 10 P Street. After MJW verified its bid, GSA awarded the firm the contract.

Custom protests that GSA improperly awarded MJW the contract because the failure to include a price for work at the 10 P Street location rendered its bid nonresponsive. GSA responds that it considered the dash in MJW's bid as a commitment by MJW to perform the required weeding services at 10 P Street at no cost to the government and therefore that the bid as submitted was responsive. In the alternative, GSA argues that it could properly waive the price omission because the work it covered is divisible from the solicitation and the cost is de minimis relative to the total cost and would not affect the competitive standing of the bidders. See Main Electric Ltd., B-224026, Nov. 3, 1986, 86-2 CPD ¶ 511. In this regard, GSA reasons that for each of the other locations MJW submitted a bid of \$75 per application or \$900 per year to perform the same work, 12 applications of weed control in non-planted areas. GSA therefore contends that MJW at most would have bid \$75 per application to perform the work at 10 P Street and argues that this amount is de minimis because it is less than 1 percent of MJW's total bid and if it is added to MJW's bid the bid remains low.

Custom disputes GSA's position. Custom first asserts that the IFB did not permit bids on less than all the contract requirements and specifically advised bidders to complete the bidding sheets for each location and the consolidated bidding sheet. Custom further contends that it cannot reasonably be inferred from MJW's bid that MJW intended to perform the work at 10 P Street at no cost to the government because: (1) MJW submitted a price for this line item on the individual location sheets for every other location; and

(2) MJW left blank the line item for the work on the individual location work sheet for 10 P Street. Custom concludes that it is obvious that MJW overlooked the item and thus did not obligate itself to perform the weeding at 10 P Street.

To be responsive a bid must constitute an unequivocal offer to perform the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor in accordance with the material terms and conditions of the solicitation. SMC Information Systems, B-224466, Oct. 31, 1986, 86-2 CPD ¶ 505. Because the failure to include a price for an item evidences a bidder's intent not to be bound to perform the item, as a general rule, a bid must be rejected as nonresponsive if the bid, as submitted, does not include a price for every item requested by the IFB. Spectrum Leasing Corp., B-216615, Feb. 19, 1985, 85-1 CPD ¶ 211. We have held, however, that in lieu of submitting a price a bidder may indicate its intent to be obligated on a solicitation item by inserting in the appropriate space in the bid schedule a notation--such as a zero, the words "no charge" or a dash--that the item will be provided at no cost or charge to the government. Keahey's Moving Co., B-224273, Nov. 24, 1986, 86-2 CPD ¶ 602.

Here, it is unclear to us from MJW's bid whether MJW intended to perform the work at 10 P Street at no cost to the government. In this regard, while MJW inserted dashes on line item 12 of the consolidated bid sheet, the work to be performed at 10 P Street, and on the line for the total bid for 10 P Street on that location's individual bid sheet, MJW left blank the unit and aggregate prices for the line item covering weed control on the individual bid sheet. Since weed control was the only work to be performed at 10 P Street, GSA had inserted "N/A" in every other unit and aggregate price column for 10 P Street. We therefore find that it is as likely that MJW overlooked the fact that weeding at 10 P Street was required and inserted dashes on the individual and consolidated bid sheets because it thought no work was required at 10 P Street, as that MJW was offering to perform the work at 10 P Street at no cost to the government. As a result, in our view the dashes in MJW's bid did not clearly express MJW's intent to perform the work at 10 P Street at no cost to the government. Despite this conclusion, however, we find that GSA properly waived the price omission in MJW's bid.

Omission of a bid price may be waived where the item for which the price is omitted is divisible from the solicitation's overall requirements, is de minimis as to total cost

and would not affect the competitive standing of bidders. HH&K Builders, B-232140, Oct. 20, 1988, 88-2 CPD ¶ 379. Here, Custom does not dispute that the work to be performed at 10 P Street is divisible from the rest of the requirements of the solicitation. Custom argues, however, that it is not clear that the omitted price is de minimis or will not affect the competitive standing of the bidders. Specifically, Custom first argues that this determination must be based on a comparison with the government estimate, and in this case the government has not provided an estimate. Custom also argues that since weeding in non-planted areas is the only work to be performed at 10 P Street, this item must carry all of the bidder's mobilization and overhead costs, and it is therefore unlikely that MJW would have offered to perform the weeding for \$75 per application, the amount it offered for other locations where additional work is to be performed. Rather, Custom speculates, MJW probably would have submitted a much higher bid to perform the work at 10 P Street.

Determining the impact of the cost of an omitted item should be based on the government estimate, if possible. See Main Electric, Ltd., B-224026, supra. However, where there is no government estimate for the item in issue a determination concerning the cost significance of the omitted item can be based on other evidence in the record which clearly indicates what the bidder might have bid for the omitted item. Here, we find that the record clearly indicates that MJW would have bid \$75 per application to perform the weeding at 10 P Street. Our conclusion is based on three factors. First, for both the base and option years, MJW bid \$75 to perform weeding in non-planted areas for every other location in the solicitation, including those areas which did not require performance of a substantial number of other tasks. Second, for every other line item MJW bid the same price for every location for both the base and option years. Finally, the three other bidders who responded to the IFB offered to perform the work at 10 P Street for \$25, \$50, and \$50.

We therefore conclude that MJW at most would have bid \$1,800 to perform the weeding services at 10 P Street, for the base and option years, that is, \$75 per application of weed control for each of 24 total applications, 12 in the base year and 12 in the option year. Since \$1,800 is approximately .04 percent of MJW's total bid of \$428,700, we agree with GSA that the price omission was de minimis in amount. Also, since adding \$1,800 would increase MJW'S bid from \$428,700 to \$430,500, an amount still below Custom's \$438,010 bid, the price omission did not affect the

competitive standing of the bidders. Accordingly, GSA properly waived MJW's price omission.

The protest is denied.

for *James F. Hinchman*
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